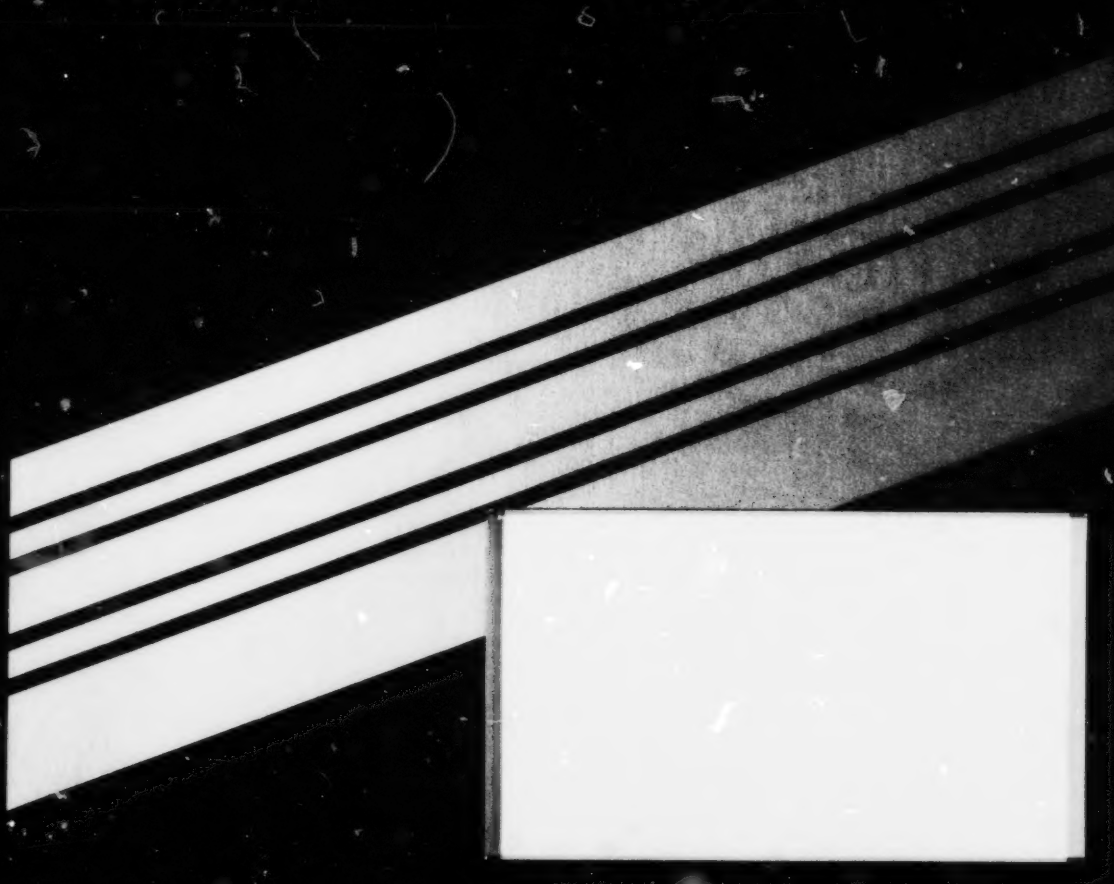
Programs Branch User Report



Solicitor General Canada
Ministry Secretariat

STAN DIVORSKI, PH.D.
RESEARCH DIVISION

T.S. PALYS
CONTRACTOR

1981

AN EXPERIMENT IN SENTENCING

No. 1984-91

The views expressed in this working paper are those of the authors and are not necessarily those of the Ministry of the Solicitor General of Canada. This working paper may not be published, cited or reproduced without permission of the Ministry.

This working paper is available in French. Ce document de travail est disponible en français.

AN EXPERIMENT IN SENTENCING

Stan Divorski

T.S. Palys

ABSTRACT

In this simulation study, two hundred six judges of the provincial courts or courts of sessions of the peace were asked to assign sentences in five cases involving six accused for whom a determination of guilt had already been made. Cases were presented as written descriptions to participants at regional seminars of the Canadian Association of Provincial Court Judges.

Participants were not only asked to assign sentence, but to provide reasons for the sentence, specify the objectives the sentence was intended to serve, list the pertinent case facts in their order of importance and provide an indication of the information and resources which they would like to have available in the case under consideration. Information was also sought regarding the judges' personal and professional backgrounds and regarding certain characteristics of their courts, including resources available, the size of community served, etc. -

The findings revealed considerable variability in the sentences assigned. The narrowest range of sentences was in a case of break and enter which was specifically constructed to be a very common example of a frequently occurring offence. The sentences ranged from a suspended sentence combined with probation

to a sentence involving one year in prison with a recommendation for temporary absence and the requirement for compulsory attendance at a trade school. Slightly less than one-quarter of the sentences were for terms of imprisonment ranging from two days to one year with an average of three months.

The widest range of sentences was for one of two accused in a case of armed robbery. The case was constructed to create difficulties for sentencing by putting into contrast positive aspects of the offender and the serious nature of the offence. Sentences varied from a suspended sentence, the only non-incarcerative, to 13 years in prison. Prison terms ranged from 8 months to 13 years and averaged 42 months.

The findings cannot stand alone as evidence of sentencing disparity because of our lack of knowledge regarding the representativeness of the model cases used and of the participants in the study. Very few cases were used and all but one were constructed so as to present difficult choices to the sentencing judge.

Although the nature of the study does not allow us to reach definitive conclusions regarding the factors which determine the choice of sentence, a statistical analysis revealed that the sentencing objectives and case facts emphasized were generally the types of variables most closely related to the choice of sentence in individual cases. Moreover, there seemed to be agreement

regarding the implications for sentence of an emphasis on certain objectives or case facts. For example, an emphasis on rehabilitation was typically associated with less severe sentencing while an emphasis on protection of the public was typically associated with more severe sentencing.

However, given the variability in sentences observed, it is noteworthy that there was little agreement regarding the case facts or objectives to be emphasized in each case. There were never fewer than eight objectives identified as important or eight case facts identified as the most important in each case.

The findings confirmed the results of previous studies in that no consistently lenient or severe judges could be identified. However, a predisposition toward leniency or severity was found among some judges. More lenient judges emphasized rehabilitation as an objective and mitigating offender variables such as employment, remorse and lack of prior record. Judges who gave longer sentences emphasized protection of the public or deterrence and focussed on the nature of the offence or harm to the victim.

The findings of this study are consistent with those of a much more exhaustive study of actual cases conducted by John Hogarth (1971). He noted that while magistrates were inconsistent with one another in terms of sentencing philosophy, they were consistent within themselves, and that judicial attitudes along

these dimensions were related to the determination of sentence. He further asserted that sentence variability is not due entirely to objective offender and offence variables but to the perceptions which judges have of these. Our study further suggests that although there may be disagreement regarding the weighting of different objectives or facts in a given case, there is agreement regarding their import for sentence.

AN EXPERIMENT IN SENTENCING

Stan Divorski

T.S. Palys

The study presented in this report was conducted as part of activities undertaken to follow-up on recommendations made by the Law Reform Commission of Canada in its report on Dispositions and Sentences in the Criminal Process. The foci of the study evolved from consideration of some of these recommendations.

In particular, the Commission encouraged movement towards a Sentencing Code which would set out the principles and policy of sentences and establish statutory provisions for sentence determination. With regard to imprisonment, the report recommended that legislative provisions state the circumstances under which imprisonment may be imposed and listed the appropriate objectives of a sentence of imprisonment.

Other specific recommendations were to require the court to give reasons for imposing a sentence of imprisonment and to establish mechanisms for the orientation of new judges and the development of sentencing criteria. One of the mechanisms emphasized as a means of developing sentencing criteria was the use of sentencing institutes and seminars.

The study was designed to illustrate dramatically issues flowing from these recommendations and to stimulate discussion of them among the Canadian judiciary.

The study was conducted by the Ministry of the Solicitor General as part of a series of regional sentencing seminars held by the Canadian Association of Provincial Court Judges with the involvement of the Department of Justice. A simulation approach was expected to be the most effective means of highlighting areas of disagreement, and consequently, the best means of stimulating discussion. The study drew on simulations conducted in the U.S. by Partridge and Eldridge (1974) and Austin and Williams (1977).

Information was sought on the extent to which sentences might be related to objectives, the importance attached to various case facts by the judge, the background of the judge, and the context in which the participants usually impose sentences, when all aspects of the offence, offender and victim are held equal.

Nature of the Study

Participants in the study were presented with written descriptions of five criminal cases involving six accused. A determination of guilt had already been made and all judges saw the same set of cases, without variation.

Following the description of each case was a series of questions which asked judges to assign a sentence, provide reasons for the sentence, specify the objectives the sentence was intended to serve, list the pertinent case facts in the order of their importance and provide an indication of the information and resources which they would like to have available in the case under consideration. Another set of questions sought information regarding the judges' personal and professional backgrounds and regarding aspects of their court environment, such as resources available, size of community served, etc.

Four of the five cases presented were selected for inclusion by a panel of judges and were based on actual cases. They were selected because they put into conflict offender characteristics, offence characteristics and harm to the victim, making the choice of sentence difficult. The fifth case, a break-and-enter, was developed by one of the authors to represent a common offence and was constructed so as to represent a statistically average incident of this offence type.

The questionnaire was designed by the authors in collaboration with a judge and was pre-tested with participants at a conference for new judges.

Context and Procedures

The study was conducted as part of eight regional sentencing

seminars carried out by the Canadian Association of Provincial Court Judges in 1980. Typically, the questionnaire was distributed at a plenary session in the morning and the bulk of the time prior to lunch was spent in its completion. This would be followed in the afternoon by a detailed discussion of the cases. In some instances, only the morning was devoted to the exercise, in which case the questionnaires were usually distributed the prior evening. In all instances, participants were asked to complete the material privately.

Participants

Two hundred six judges of the Provincial Court or Court of the Sessions of the Peace, including three females, completed questionnaires. Information on the total attendance at the seminars is not available. (There are slightly more than 1,000 judges of these courts across Canada. Although the sample is quite large, its representativeness is unknown since it includes only those who decided to attend the conference, were able to attend and submitted a questionnaire.) Table 1 shows the proportion of judges represented by region. The largest number, 99, were from Ontario, with 37 from Quebec, 47 from the western provinces and 23 from the Atlantic provinces.

The participants were by and large not new to the bench. Their experience as judges ranged from 1 month to 42 years, with over half having more than 5 years experience (mean = 8 years; median = 5.99 years).

Sentencing Environment

About half the respondents (50.5%) served a combination of rural and urban communities, while a substantial proportion (38.9%) served in primarily urban settings and only a small proportion (10.5%) served primarily rural communities.

There was considerable variation in the number of sentencing alternatives available to different judges. When asked to indicate what alternatives other than fine, probation and incarceration were available, each participant listed between zero and eight alternatives. Fifty-one percent indicated one alternative, and twenty-two percent indicated that no other alternatives were available to them. The most common, listed by nearly 69% of participants, was community service, with the remaining alternatives (each mentioned by less than 10% of participants) being impaired driver education, victim offender reconciliation, shoplifting, drug treatment, life skills and supervised residence programmes.

The findings of the study might have been influenced by differences between the way in which cases were presented in the study and the way in which they would have been presented in the court. Additionally, participants may have differed in the confidence which they attached to the information presented. Therefore, a number of questions were asked regarding the key sources of case and sentencing information, and a statistical

analysis was undertaken to determine their specific importance. In particular, because the study presented the kinds of information which might typically be contained in a pre-sentence report, some questions were intended to assess the use and degree of satisfaction with these reports.

In general, participants seemed satisfied with the degree of information provided. Following each case, they were asked whether they would have liked additional information, and in only 24% of the instances was this question answered in the affirmative. Also, the use of pre-sentence report type information seems to have been appropriate. In 69% of the cases under consideration, participants indicated that they would, in fact, have requested a pre-sentence report.

Moreover, the use of this type of information seemed appropriate given the degree of confidence expressed regarding pre-sentence reports. When asked whether pre-sentence reports almost never, sometimes, often, usually, or almost always, contained an adequate degree of information, 87% of the respondents indicated that they usually or almost always did, while less than one percent indicated almost never. Moreover, over 90% of respondents indicated that they usually, or almost always can rely on the information contained in pre-sentence reports.

However, it appears that the information presented may have differed in one important respect from that normally available in court - with regard to the presence of recommendations regarding sentence. Only one of the cases contained an explicit recommendation to sentence as part of the pre-sentence report. On the other hand, when participants were asked whether pre-sentence reports typically contain explicit recommendations, almost two-thirds replied that this was often, usually, or almost always the case. Moreover, these recommendations generally were viewed as being at least somewhat important (43%) if not quite important (30%) or very important (7%).

Another potential source of sentence recommendations is defence counsel. But, in only one of the model cases did the defence counsel offer a sentence plan, while roughly 60% of the participants indicated that plans were presented often, usually or almost always. Moreover, about 90% indicated that these plans were somewhat, quite or very important rather than only a little or not at all important.

In summary, information provided to participants in the study seemed reasonably representative of what would have been available in court. The study made use the type of information normally found in presentence reports and most judges indicated that they would have requested a report in the case under consideration. Moreover, the fact that they would not have required information other than that provided suggests that they were satisfied with

the degree of information provided, which is in accordance with their perception of pre-sentence reports normally prepared for them. Furthermore, they generally believe that such information can be relied upon.

However, the cases presented may differ from the typical situation experienced by many judges due to an absence of recommendations in a pre-sentence report or from the defence.

Data Analysis

A stepwise multiple regression analysis was used to estimate the relative importance of various factors for the sentences assigned in each case.* The analysis identified, in each case, the factor accounting for the greatest amount of variability among sentences, and subsequently, each variable in order accounting for the greatest amount of variability remaining.

Three sets of variables were utilized for explaining sentence severity:

- Judge Variables (background, experience and court environment)
- the Objectives cited in each case; and
- the importance attached to the Case Facts cited in each case.

* The Technical appendix to this report is available upon request from the Research Division, Solicitor General Canada.

Four separate analyses were conducted for each case. First, the importance of variables was assessed for each of the three variable sets independently, then the relative importance of items within all three sets of variables was assessed simultaneously. Only the results of the overall analysis are presented here. The results of the separate analyses for each variable set can be found in the technical appendix.

The sentences given by each judge for a particular case were ranked for severity using a scale developed by the authors and a judge. Fines were the least severe dispositions, followed by suspended sentence/probation, followed by jail. For combination sentences, the most severe component prevailed (e.g., a sentence of "3 months and a $500 fine" was categorized first as a prison sentence). Fines were ranked according to amount and equivalent fines were differentiated according to the presence or absence of other conditions (e.g., term of imprisonment to be served in default).

For suspended sentences/probation, the length of the order was used to differentiate severity, and further distinctions were made according to the assignment of additional conditions.

With regard to incarceration, length of sentence was used, and where lengths were equal, sentences with recommendations for Temporary Absence Permits or intermittent serving of sentence were

treated as less severe than those that did not include such a recommendation. Additional distinctions were made on the basis of the magnitude of any fine, length of probationary period, and presence of conditions combined with the incarcerative sentence. Conditions were treated in as being equivalent in severity, except for driver's license suspensions and community service orders. In addition, restitution was treated as the most severe condition in the theft over $200 case where the amount to be returned ($92,000) was quite substantial.

In order to assess whether the use of a different sentence severity scale would have improved the results of the regression analyses, the data from this study were reanalyzed according to one developed by Sutton (1978).

The ranking measure used in the present study was found to account for more sentence variability than Sutton's scale in 20 of the 24 regression analyses which were conducted. Moreover, Sutton found that the variation among a number of ranking schemes tested, including his own, was no more than five percent, which confirms there would have been little advantage to be gained using a different sentence severity scale than the one developed for this study.

Limits of the Findings

It might appear from the findings to be presented that unwarranted sentencing variability i.e., unacceptable levels of disparity occurs in Canada. However, because of a number of limitations, this study should not be used as evidence for such assertions:

Relative Importance of the Variables. Whether or not sentence variability is acceptable may depend upon the factors which produce variability. It is clearly appropriate for sentences to vary according to the characteristics of the offence, but perhaps less acceptable for them to vary according to the family background of the judge. However, given the limited range of variables examined in this study, it would be unwise to reach general conclusions about the relative importance of these variable sets. Nonetheless, it should be noted that the Objectives and Case Facts emphasized accounted for a greater proportion of the variation among sentences than did the background of the judge and his sentencing environment. Of the 41 statistically significant predictors, 10 were Judge Variables accounting, on average, for only 9% of the differences among sentences imposed in a given case; 17 variables involved Objectives and accounted for 20% of the differences, on average; and 14 involved Case Facts, accounting for 21% of the differences.

The Use of Statistical Control. Related to the preceding point, the use of statistical rather than experimental procedures for examining the relationship between sentence severity and the Objectives, Case Facts emphasized and background of the judge does not permit one to reach conclusions about which variables cause differences in sentence severity. Rather, conclusions can only be reached about the relative strength of the relationships between the variables used and sentence. Of course, to the extent that variables revealed to be important by the statistical analysis are identified as causative factors by theory or in other research, this possibility is supported.

Artificiality. The study differs from normal sentencing situations in a number of respects. An obvious difference is the reliance on written case descriptions without the presence of the offender, crown attorney or defence attorney. It may be that the appearance and demeanor of the defendant in court would affect sentence, as might submissions made by counsel. With regard to the presence of the offender, an abundant literature concerning person perception, impression formation, and selective perception (eg., Schneider, Hastorf & Ellsworth, 1979) has shown that there is substantial variability in how a given individual is viewed by others, even in instances where the "others" are professional observers. Personal background, attitudes, motives and stereotypes, to name but a few factors, influence the impressions that are derived. The implication of these considerations in total, therefore, is that the absence of a real accused may affect

the average sentence if the defendant's demeanor or character was unusually positive or negative, but that the extent of sentencing variability in a simulated case would in all probability be equivalent to or represent an underestimation of that which would have been observed in an actual case.

With regard to submissions made by defence or prosecution, there is no reason to expect that different lawyers would make the same recommendations in a given case. Research on sentence recommendations included in pre-sentence reports has shown that variability in the ways which probation officers perform this task may increase the possibility of disparities in sentencing.

Second, actual courtroom conditions are different from a sentencing exercise and might reduce variations among sentencing decisions. In particular, because the sentencing exercise did not involve real consequences, participants may have given less serious consideration to their sentences and been less moderate. As a result, sentences that would have been lenient in the real setting may be even more so in a simulated setting, while sentences that would have been severe may become extreme.

On the other hand, there is no reason to expect the same pressures to be operating in all court settings, or to produce the same effect on sentence in all courts. For example, in the present study, size of community served is at times related to differences in the severity of sentences imposed, suggesting, in

turn, that different conditions hold true in different communities. This finding also suggests that day to day sentencing pressures, rather than being non-operative, may have created tendencies which were carried over into the sentencing exercise.

Inadequacy of Information. In an actual court case the judge has more information available or can acquire more information. On the other hand, judges have commented on shortcomings in the amount of information normally available to them. Moreover, it appears that the power of the judges to make inquiries, particularly of the accused, may be limited (Canadian Sentencing Handbook, pp. 11-16).

Furthermore, there is some question as to the efficacy of additional information in reducing variability in sentencing, a point which has been confirmed by studies conducted in the U.S. by Wilkins, et al. (1976). Finally, participants' satisfaction with the amount of information provided in the sentencing exercise appeared to be quite high, given that in only twenty-four percent of the instances was there an indication that more information would have been desirable.

Regional Differences. The small numbers of participants from any given region and uncertainty regarding the representativeness of the samples prevented this factor from being taken into account in the analysis. Consequently, there is a risk that the findings may

reflect regional differences in sentencing. However, this possibility seems unlikely given that the sentence ranges within a region were nearly as large as nation-wide. In Ontario, for an example, sentences for John J. in the armed robbery case ranged from a suspended sentence to 10 years, while Canada-wide, the range was from a suspended sentence to 13 years. For Michael M., sentences ranged from 8 months to 10 years, compared with a nation-wide range of 8 months to 13 years.

Representativeness of Cases. The study included only five cases, and consequently the findings cannot be viewed as representative of all the types of cases which might normally be heard in Provincial Courts. This is compounded by the fact that all but one of the cases were constructed so as to present difficulties in the determination of sentence by contrasting positive and negative aspects of the crime and the offender. It is noteworthy therefore that the range of sentences for these difficult cases seemed to be somewhat greater than for the one case constructed to be representative of a common offence.

Therefore, although the findings here indicate that there may be considerable variability among sentences in cases which present problematic fact situations, it is not known how frequently these kinds of difficulties are normally encountered, and consequently, the findings of this study alone should not be used to reach conclusions about the frequency and magnitude of disparity in Canadian courts. However in even the most straightforward case,

there remained a fair amount of variability among the sentences assigned.

Results

Case # 1: Break and Enter

This case was designed to be an example of a frequently occurring offence. The remaining four cases were based on actual events and were selected because they created a contrast between negative and positive aspects of offender characteristics, offence characteristics and harm to the victim, making the choice of sentence difficult.

The offender is young, with no prior criminal record, from a supportive family and has no particular problem with drugs or alcohol. He has few marketable skills and is currently unemployed, although he is seen as a satisfactory employee when working. He claims to have committed the offence to obtain money.

The offence was perpetrated with forethought and involves non-forcible entry into a house. No vandalism, no personal confrontation nor violence occurred. The theft amounted to less than $200 worth of cash and goods. The offender was polite, concerned by his predicament and pleaded guilty.

The sentences imposed by the participants ranged from a

suspended sentence combined with probation to a combination sentence involving one year in prison with a recommendation for temporary absence and the requirement for compulsory attendance at a trade school. Slightly less than one-quarter of the sentences were for terms of imprisonment ranging from 2 days to 1 year, with an average of 3 months.

Eight different Case Facts were identified by more than one judge as being the most important. The absence of a prior record and the age of the accused were the most frequently cited aspects of the case. When all variables were assessed via a regression analysis for their importance in explaining sentence severity, only one Case Fact was revealed to be important. Premeditation was the second best predictor, and was associated with more severe sentences.

Eight different Objectives were cited as important with 77.6% of participants mentioning rehabilitation as important. In the regression analysis, four categories of Objectives were found to be important. An emphasis on general deterrence was the best predictor overall and was associated with more severe sentencing. The other Objectives found to be important were also related to deterrence.

The only important Judge Variable in the analysis was whether or not the judge had a general practice background, with judges having such experience tending to impose less severe sentences.

Case # 2: Armed Robbery

This case resulted in the widest range of sentences of imprisonment, and the most severe sentences. Two persons were involved. One, John J., is a young, unemployed Native Indian from a deprived background including a family with alcohol problems, violence and a history of serious criminal involvement. He has a juvenile record involving theft and assault on a police officer, although there has been no additional involvement during the past 4 years. The other is Michael M., a 29-year old caucasian male who is a reformed alcoholic. He is currently employed and has a supportive wife. His past record includes break and enter, escape and assault, but there have been no new offences during the past 7 years.

The two forced their way into the home of an elderly couple at gunpoint and tied them to chairs, after forcing the woman to strip. They uttered threats, and the younger accused fondled the woman's breasts.

They were caught shortly after leaving the house with $3,300 worth of cash and goods. Each was convicted of armed robbery, Possession of a weapon for the purpose of committing an offence, and indecent assault.

Since many judges gave a single, combined sentence for all three charges, a total sentence was calculated for each judge.

Sentences for John J. ranged from a suspended sentence (the only non-incarcerative sentence) to 13 years in prison. The prison terms ranged from 8 months to 13 years and averaged 42 months. Sentences for Michael M. varied from 8 months to 13 years in prison and averaged 54 months.

Ten different Case Facts got at least two votes as being the most important with respect to John J. and eleven with respect to Michael M. The violent and despicable nature of the act was the most frequently cited aspect of the case (31%) for both defendants and planning/premeditation (18.3%, John J. and 15.7%, Michael M.) was the second most frequent. In the regression analysis, two Case Facts, the social background of the accused (associated with less severe sentences) and the occurrence of the offence in a private residence (associated with more severe sentences) were important in explaining sentence severity in both the cases of John J. and Michael M. For Michael M., the occurrence of the offence in a private residence was the second most important factor overall and two other Case Facts, his prior record and premeditation, were also important.

Eight different Objectives were cited as important in the Sentencing of John J. and Michael M. Protection of the public and general deterrence were the overriding considerations, cited by 47.5% and 45.9% respectively, of the judges in the case of John J. and 54.1% and 47.0% respectively, in the case of Michael M. The regression analysis revealed that protection of the public was

in fact the most important predictor in the sentencing of Michael M. and the second most important in the sentencing of John J. Rehabilitation as an Objective was also an important predictor in both cases. It was related to less severe sentences and was the most important predictor for John J. Maintaining the credibility of the court was the only other Objective of importance and was related to less severe sentences for John J.

The less severe average sentences received by John J. than Michael M. may be accounted for by the fact that rehabilitation as an Objective was the most important predictor in the former's case and protection of the public in the latter's. Also, the stronger emphasis on negative Case Facts may have been a factor in the more severe sentencing of Michael M.

Variables related to the legal background of the participants were more important in the case of Armed Robbery than in other cases. Judges indicating a specific legal background (e.g., municipal law), rather than the general categories of civil, criminal (defence or prosecution), general practice or family law, sentenced both offenders less severely than their colleagues. Additionally, Judges having a previous background in general practice sentenced John J. less severly than did their colleagues (the third most important predictor overall), while judges whose fathers were engaged in farming occupations tended to give Michael M. less severe sentences than did their colleagues.

Case # 3: Assault Causing Bodily Harm

The offender is a young, employed male high school graduate with no prior record, but with a reputation for having a violent temper when drunk. As a youth he was frequently ill, was a mediocre student and was beaten as punishment. At a bar, the offender was verbally abusive to an innocent individual and then threw a glass at him, causing the loss of most of the vision in one eye.

The least severe sentence was a $500 fine combined with 6 months probation and other conditions. Prison terms constituted 96% of the sentences and ranged from 1 week to 5 years, the maximum permissible under law, with an average (median) of 6 months. Eight Case Facts were cited at least twice as being the most important with the most frequent by far being the violent nature of the act, mentioned by nearly 44% of the participants responding. Of the six variables which were statistically significant predictors of sentence, two were Case Facts, with the lack of provocation being the second most important variable overall and the poor social background of the offender the ranking fourth.

Ten objectives were cited as important with nearly 54% of those responding mentioning specific deterrence and nearly 48% mentioning general deterrence. The most important predictor overall was the importance placed on the Objective of maintaining

the offender's employment, and another Objective, protection of the public, ranked sixth.

With regard to characteristics of the judge, the third most important predictor overall was whether or not the sentencing judge served a rural community. Judges from these communities were more likely to be lenient in their sentencing. Finally, judges of a higher socio-economic background were more severe in their sentences.

Case # 4: Impaired Driving

The accused is a successful businessman and family man who is highly involved and regarded in his community. After a particularly hard week of work, he attended a wedding reception where he consumed a great deal of alchohol, sufficient to raise his blood level alcohol to 240 mg/per 100 ml of blood. After insisting on driving, he fell asleep at the wheel, lost control of the vehicle, and killed two children who were on the sidewalk. He has no history of drinking problems or any record of past alcohol-related motor vehicle offences, in addition to which, he has shown a great deal of remorse.

The maximum possible sentence for this crime on a first offence is a $2,000 fine or 6 months imprisonment or both. The least severe sentence was a $300 fine. Sixty-seven percent of the

participants imposed prison terms ranging from one day to two years and averaging 3 months.

Eight different Case Facts were cited more than once as being the most important, most frequently cited was the death of the two children (cited by 30.8%). Emphasis on this factor was also the most important predictor of sentence. The accused's remorse was the only other Case Fact significantly related to sentence and was seventh in importance.

Eight Objectives were cited, with 58.6% of the participants mentioning general deterrence, which turned out to be the sixth most important predictor of sentence severity. Another Objective, protection of the public, was second in importance and yet another, deterrence (type unspecified), was fifth.

The size of the community served was third in importance, with judges serving communities of 25-50,000 in population giving less severe sentences. Judges with longer service on the bench gave more severe sentences.

Case # 5: Theft Over $200

The offender is a 32-year old married male with three dependent children. He has been in charge of the company's books for five years and began altering them two years ago in order to cover gambling debts. He has pled guilty to defrauding his

company of roughly $92,000. A repayment scheme has been approved by the employer, who is willing to keep the offender on and who is more interested in restitution than in punishment.

The maximum penalty provided in the Criminal Code is 10 years imprisonment. The least severe sentence was a $1,000 fine combined with a term of probation. Seventy-nine percent of the sentences were for terms of imprisonment ranging from 14 days to 3 years, with an average (median) term of 6 months.

Twelve Case Facts were mentioned more than once as being the most important. The most frequent was the violation of a position of trust (mentioned by nearly 42% of those responding). The next most frequent was the attitude of the employer, which was given by nearly 10%. These two Case Facts were the first and third best predictors of sentence severity and another Case Fact, the magnitude of the theft, was the second best predictor. Of these, variables, only emphasis on the employer's attitude was associated with less severe sentences.

Ten Objectives were cited, with general deterrence, associated with more severe sentences, being mentioned by nearly 48% of judges responding. However, a number of other Objectives were also frequently mentioned, with the next two in order - rehabilitation (39%) and ensuring restitution (just over 30%), being associated with less severe sentencing. These three Objectives were also significant predictors of sentence severity.

In terms of the background of the judge, size of the community served proved to be an important predictor, with judges from communities of 100,000 to 250,000 population tending to sentence more leniently.

Discussion

Consistency in Sentencing

There is not unanimity regarding the Objectives or Case Facts to be emphasized in a given case, nor regarding the sentence to be imposed, but the regression analyses demonstrate that judges who emphasize similar aspects of a case impose similar sentences. Moreover, there are patterns common to all the five cases that suggest the existence of general principles governing the relationship between sentence and particular aspects of cases. This is illustrated graphically in figures 1 and 2, which demonstrate the relationship between sentence and emphases on either rehabilitation or protection of the public, all cases considered simultaneously. Figure 1 shows that the majority of judges giving non-incarcerative sentences, and only a minority of judges giving incarcerative sentences, are likely to emphasize rehabilitation.

Figure 2 shows a reverse relationship with regard to protection of the public. Judges giving incarcerative sentences are more likely to cite this objective, and the longer the

sentence imposed, the greater the likelihood that protection of the public was cited.

Figure 1.

% OF JUDGES CITING REHABILITATION

FOR EACH SENTENCE TYPE

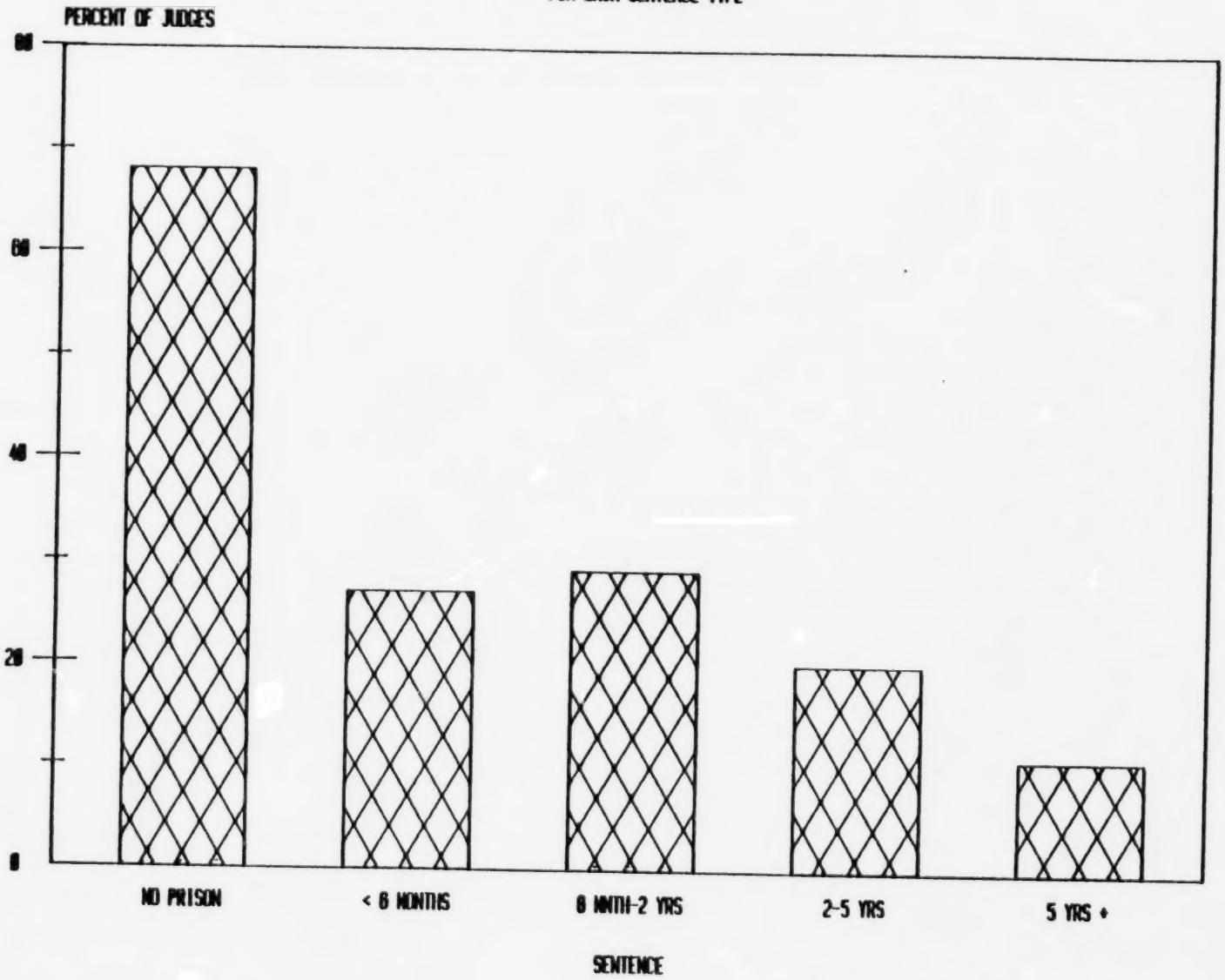
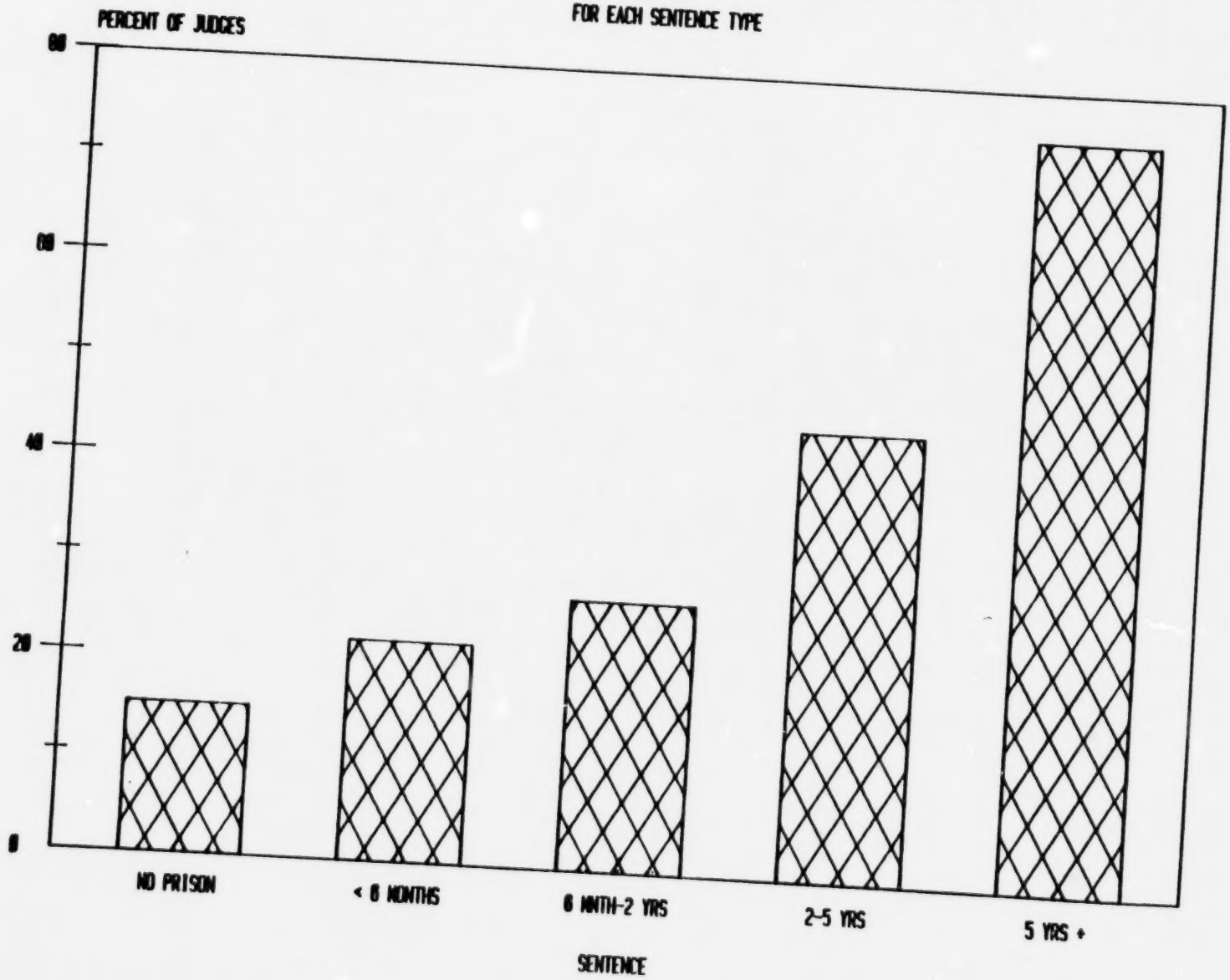


Figure 3

% OF JUDGES CITING PROTECTION OF PUBLIC



Individual Consistency in Sentencing

Further insights can be gained by examining the extent to which individual judges were consistently lenient or severe in their sentencing decisions and comparing the differences in variables emphasized by those who were different in overall leniency or severity.

One way to determine the extent of individual consistency in sentencing severity is to examine, for all possible pairs of cases, the correlations between the relative (ranked) severity of each judge's sentences in those cases. If judges were consistently lenient or severe, their rankings in one case should correlate highly with their rankings in another. The results of this analysis (Table 1) do not support this view, with two exceptions.

Judges who were more severe in the assault case tended also to be more severe with the accused in the impaired driving case. These cases were quite different from one another except that each involved serious injury or death to the victims. Consequently, the statistically significant (although somewhat small) correlation between the sentences assigned in these two cases may indicate a similar reaction to that common factor. This interpretation is more compelling if it is recalled that emphasis on the consequences of the crime was associated with more severe dispositions in each case.

TABLE 1

Intercorrelations of ranked severity of each judge for all case pairs.

	Impaired Driving	Break & Enter	Armed Robbery (JJ)	Armed Robbery (MM)	Theft over $200
Assault	r=+.26*	r=+.14	r=+.07	r=+.10	r=+.13
Impaired Driving		r=+.04	r=-.04	r=.00	r=+.06
Break & Enter			r=+.13	r=+.19*	r=-.04
Armed Robbery (JJ)				r=+.72**	r=+.14
Armed Robbery (MM)					r=+.13

* p .01 ** p .001

Judges were quite consistent in how they treated the two accused in the armed robbery case. Although there were several attributes on which the two accused could have been differentiated, many judges commented both informally and in their questionnaires that they felt some obligation to be consistent in their sentences to the two partners in that crime.

There is a second and perhaps more direct way of asking whether judges were consistently lenient or severe in their sentences, since the correlational approach may have masked the fact that some judges were consistently lenient or severe. Sentences for each case were divided into three groups: relatively lenient sentences, moderate sentences, and relatively severe sentences, so that from 60 to 70 percent of the sentences in each case would be considered "moderate" sentences, while from 15 to 20 percent of the sentences would fall into each of the "lenient" or "severe" categories. This could not be done in the break and enter case where the majority of sentences were minor. Consequently, there was no "lenient" category, and most sentences were considered "moderate" while the remainder were labelled "severe".

Next, lenient sentences were given a score of 1, while average and more severe sentences received scores of 2 and 3, respectively. Then each judge's score was added across all six cases to arrive at a total score. A judge who had imposed sentences that were consistently lenient would thus have a total score of 7 (rather than 8, due to the absence of the "lenient" category in the break and enter case), while a judge who was consistently at the severe end of the distribution would have a total score of 18. The actual distribution of scores obtained is presented in Figure 3.

While scores could theoretically range from 7 to 18, the observed scores ranged from 8 to 17. In other words, no judge in the study was ever at the lenient or severe end of the distribution 100% of the time. This finding corresponds with the results of a similar analysis conducted by Partridge and Eldridge (1974) who also found little evidence for consistent leniency or severity in the sentencing patterns of individual judges.

Neither was there evidence that the consistency or leniency of individual judges varied between regions. Table 2 shows that the range of leniency scores for judges in the western region was as great as for Canada as a whole and that the ranges for the remaining regions nearly as great. Moreover, the average leniency scores for each region were highly similar, and statistical analysis failed to reveal any significant differences.

Figure 5 RELATIVE SEVERITY OF INDIVIDUAL JUDGES

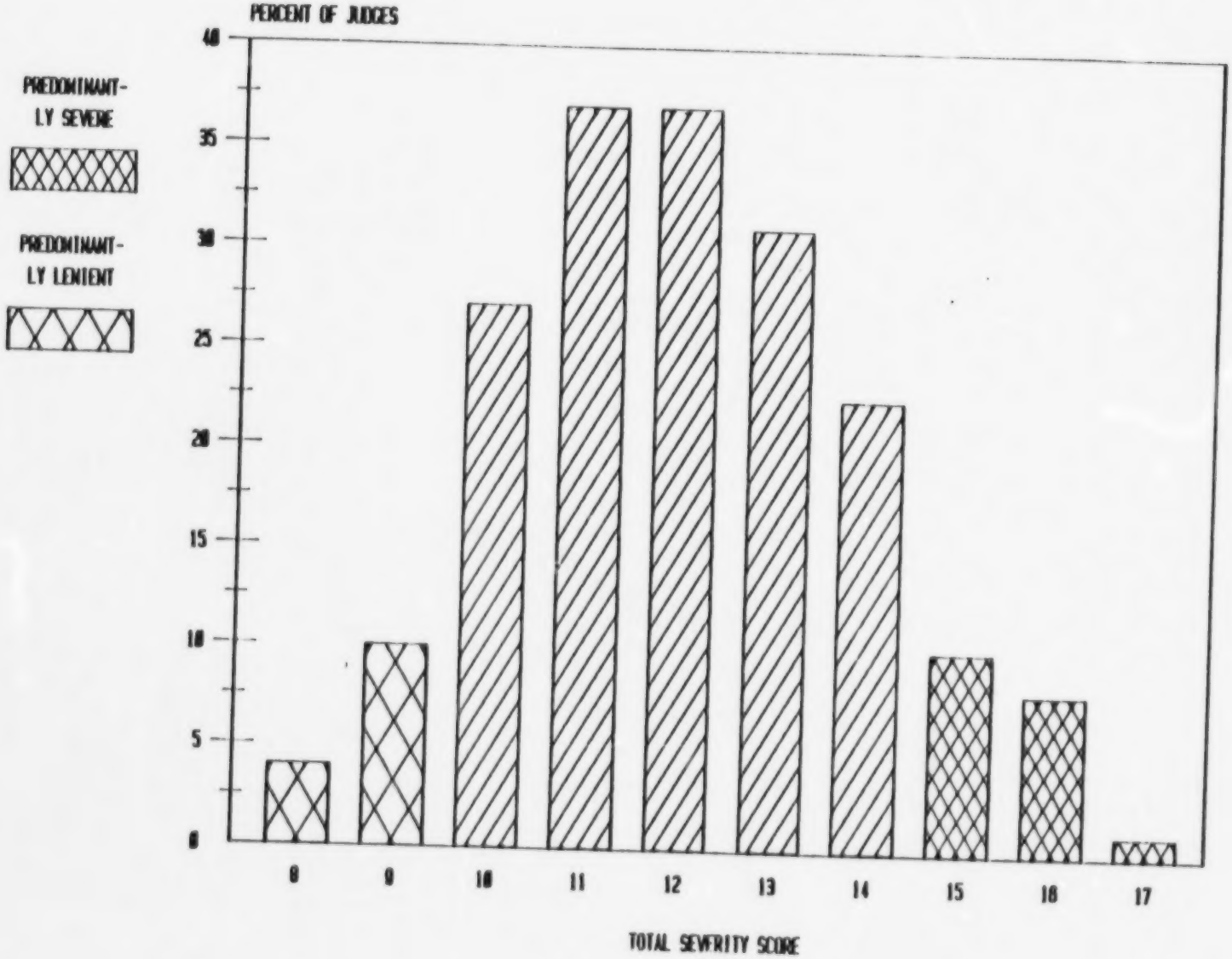


TABLE 2

Ranges of Leniency - Severity Scores for Participating Judges within Regions and Canada-Wide.

Region	Range	Average (Mean)
Ontario	8 - 16	11.7
Western Provinces	8 - 17	11.9
Quebec	9 - 16	12.4
Eastern Provinces	9 - 16	12.7
Canada	8 - 17	12.7
Total possible range is	7 - 18	

Although the data suggest an absence of consistent differences in leniency/severity, Figure 3 shows that there were differences among some judges in their propensities for lenient or severe sentences. In order to assess differences in the emphases of judges dissimilar in overall leniency/severity, they were divided into three groups and were then compared with respect to their mean scores on the Legal Objective and Case Fact variables that had emerged as significant predictors. An overall score of 10 or less was considered generally lenient, 11 to 13 average, and 14 or more as generally severe.

The results of this analysis revealed that, generally, the more lenient judges focussed on the individual offender, emphasizing mitigating factors. Imprisonment, although not avoided, was generally used sparingly with a consistent emphasis on the prospective rehabilitation of the accused.

Judges tending to give severer sentences focussed consistently on the consequences of the offences to victims, on the general need for the public to be protected from offenders and on the deterrence of those who might become offenders.

Judges who were moderate on average could have achieved a moderate score in two ways: either by consistently sentencing "averagely", or by sentencing severely in some cases and more leniently in others. In some instances, they were moderate in their emphasis on Facts or Legal Objectives to which the other groups attached the highest priority or else ignored. Others acknowledged factors emphasized by both lenient and severe judges and chose a middle course. Still others emphasized most strongly a variety of concerns in balance.

Conclusions

In summary, the findings of the study reveal variability in sentences assigned in the cases studied. This variability may be partly due to disagreement among the study participants regarding the sentencing objectives and facts to be emphasized in a given

case, although there seem to have been agreement regarding the implications which a specific objective or fact may have for the determination of sentence.

Disagreement regarding the emphases to be placed on particular objectives or facts suggests that some judges hold consistent sentencing philosophies and differ from others in terms of the particular philosophies held. These philosophies are related in a consistent fashion to the overall severity or leniency of all sentences imposed. However, no judge was found to be consistently lenient or severe.

Two philosophies were identified, one emphasizes rehabilitation and focusses on mitigating characteristics of the offender and his background, the other emphasizes protection of the public and focusses on the nature of the offence, consequences to victims and prior criminal involvement of the offender. There are suggestions in the findings that a variety of other sentencing philosophies may exist.

These findings are consistent with those from the much more exhaustive examination of actual cases conducted by Hogarth (1971). He found, (as did Palys and Divorski) that judges differ in the criteria used to decide among different kinds of sentences and in the way in which conflict between the offender's needs and community protection is resolved. Moreover, he noted that while magistrates were inconsistent with one another in terms of

sentencing philosophy, they were consistent within themselves, and that judicial attitudes along these dimensions were related to the determination of sentence.

The contribution offered by this study is to illustrate that sentence variability can be observed when objective offender and offence variables are held constant, supporting Hogarth's assertion that variability may not be due to these objective factors, but to judges' perceptions of them.

REFERENCES

Austin, M., and Williams, T.A., III. A survey of judges' responses to simulated legal cases: Research note on sentencing disparity. Journal of Criminal Law and Criminology, 1977, 68(2), 306-310.

Canadian Sentencing Handbook. Canadian Association of Provincial Court Judges, Judge D.E. Rice, Executive Director, P.O. Box 246, St. Stephen, New Brunswick, E3L 2X2.

Guidelines: Dispositions and sentences in the criminal process. Ottawa, Ontario: Law Reform Commission of Canada, 1977.

Hogarth, J. Sentencing as a human process. Toronto: University of Toronto Press, 1971.

Patridge, A., and Eldridge, W.B. The Second Circuit Sentencing Study. A report to the judges of the Second Circuit. New York: Federal Judicial Center, August 1974.

Robinson, J.P., Athanasiou, R., & Head, K.B. Measures of Occupational attitudes and occupational characteristics. Ann Arbor, Michigan: Institute for Social Research, 1973.

Schneider, D.T., Hastorf, A.H., & Ellsworth, P.C., Person Perception (2nd Edition). Reading, Mass: Addison-Wesley, 1979.

Sutton, L.P. Variations in federal criminal sentences: A statistical assessment at the national level. Washington, D.C.: U.S. Dept. of Justice, Report SD-AR-17, 1978.

Wilkins, L.J., Kress, J.M., Gottfredson, D.M., Calpin, J.C., and Gelman, A.M. Sentencing Guidelines: Structuring Judicial Discretion. Albany, N.Y.: Criminal Justice Research Center, 1976.